

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission		Kauaʻi Police Commission	Meeting Date	July 27, 2018
Location	Moʻikeha Building – Meeting Room 2A/B		Start of Meeting: 9:02 a.m.	End of Meeting: 12:20 p.m.
Present	Chair Gerald Bahouth; Vice Chair Mary K. Hertog; Commissioners: Catherine Adams, Leina`ala Jardin, Kevin Mince and Roy Morita. Also present: Boards & Commissions Office Staff: Support Clerk Mercedes Omo; Office of the County Attorney: Deputy County Attorney Mark Ishmael; Police Department: Assistant Chief Robert Gausepohl; Sergeant John Mullineaux; Captain Roderick Green; Officers Randall Nero and Bobilee Silva and numerous ranking Officers in the Kauaʻi Police Department.			
SUBJECT	DISCUSSION			ACTION
Call To Order				Chair Bahouth called the meeting to order at 9:02 a.m. with six commissioners present to conduct business.
Chair’s Announcements	Vice Chair Hertog read a letter from First Deputy Prosecuting Attorney Jennifer Winn to Lieutenant Chris Calio, thanking him for his hard work and dedication in solving the murder of Jon Togioka and making sure that his killer was brought to justice, including his entire team for playing a major role in helping to solve the case, and the many personnel – sworn and civilian – who did their job well and gave the jury what they needed to convict.			
Officers of the Month: Randall Nero and Bobilee Silva	Reading the recognition for the Officers of the Month was Sergeant John Mullineaux. Also present for the recognition were members of the Special Olympics, Ms. Tracy Bender and Ms. Jocelyn Barriga. Officers Nero and Silva were recognized for their generosity in giving their time to be the Guardians of the Flame at this year’s 50 th Annual Troy Barboza Law Enforcement Torch Run on Oʻahu. This year was notably special because the flame that lit the torch came from the Kīlauea volcano on Hawaiʻi Island, traveled through the islands of Maui and Lanaʻi, before arriving on Oʻahu. Ms. Bender thanked the Kauaʻi Police Department, especially Officers of the Month Nero and Silva, for all of their support in making the event very memorable and successful.			

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Approval of Minutes June 22, 2018 and July 6, 2018	Ms. Adams pointed out that a correction needed to be made on Page 5 of the June 22, 2018, meeting minutes, noting that the word “second” was missing where it said, “the Commission should never guess the Chief.” Staff acknowledged the correction and will make the necessary changes.	Mr. Morita moved to approve the meeting minutes as amended. Mr. Mince seconded the motion. The motion carried 6:0.
Chief's Monthly Reports	<p>Assistant Chief Rob Gausepohl apologized on behalf Assistant Chief Mike Contrades for not being able to attend the meeting. A/C Contrades was attending a training at the National FBI Academy in Virginia.</p> <p>A/C Gausepohl reported that the Department is moving forward with its new online reporting system, where members of the public who want to file a complaint can do so online; all they have to do is complete the form and press send. This will alleviate the time spent by an officer having to go out to the scene, take the report, and write the report.</p> <p>Chair Bahouth asked about following up once a complaint is received by the officer. A/C Gausepohl responded that the way it works is once the individual completes the online form and presses send, the information will go directly to dispatch and in turn, they will assign the case to a beat officer in the area for follow-up.</p> <p>Vice Chair Hertog asked if the system allows the individual making the complaint to print out a copy of the report for insurance purposes. A/C Gausepohl responded that the Department will not issue a report number until the report is completed; however, there is a way for an individual to get a copy of the redacted report for insurance purposes.</p> <p>A/C Gausepohl shared that the Department will be sending representatives from the Department to attend the memorial services for fallen Hawai'i Island Officer Bronson Kaliloa on August 4, 2018. On a lighter note, Assistant Chief Contrades will be doing ride-alongs to get a feel on what the patrol officers go through.</p>	

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	<p>Vice Chair Hertog commented relative to the General Crime Report that it seems the Department had one heck of a month in terms of murder and attempted murder cases, several unattended death cases, and numerous thefts. She expressed her appreciation to all of the police officers in the Kaua‘i Police Department who are often sometimes not recognized for the work that they do.</p> <p>Chair Bahouth asked the Commissioners if they had any questions relative to the Chief’s monthly reports.</p> <p>Mr. Mince asked where the Department was at in implementing its seven-point program/junior apprentice police officer program.</p> <p>Captain Roderick Green explained that because of legal concerns, the cadet program is still under review by the Human Resources Department and the Office of the County Attorney as to whether or not it is constitutional to offer the program to only high school students and not someone who is 30 years of age who wanted to participate in the program. Relative to the seven-point program, Captain Green explained that the Department has created a curriculum comprised of various questions, which, at this point, they are waiting to consolidate the questions into the cadet program. Mr. Mince asked if the program hinges upon all seven parts coming together at the same time, and if the idea of giving the people the sample writing test is still in play, and if so, what would happen next if they end up failing the test. As for the continuum of getting the seven-point program up and running with the understanding that one of the steps is questionable, Mr. Mince asked where the other six steps in the process were.</p> <p>Vice Chair Hertog suggested placing the item on the Commission’s next agenda to give Assistant Chief Gausepohl time to prepare a report rather than bombard him with questions he’s not prepared to answer. Chair Bahouth agreed and asked Staff to place the item on the Commission’s next meeting agenda.</p>	

SUBJECT	DISCUSSION	ACTION
Business KPC 2018-06	<p><u>Discussion and possible decision-making on revising the Kaua'i Police Commission Rules on Administrative Practice and Procedure to reflect the Intermediate Court of Appeals decision of June 2016 regarding the discipline of the chief of police, commission oversight and supervision of the chief. On-going</u></p> <p>Vice Chair Hertog stated that at a previous meeting, Mr. Mince presented a PowerPoint presentation on the proposed changes to the current Police Commission rules; however, County Attorney Trask shot down almost every point Mr. Mince was trying to make and it didn't go any further than that. Given that, she felt that there needs to be more one-on-one conversations with Mr. Trask and Deputy County Attorney Ishmael as to what the Commission is or is not allowed to do. She pointed out that the Commission does not want to interfere with the Department's day-to-day operations, and its main focus is on the supervision of the police chief and any aspect of information the Commission needs in order to fulfill its responsibilities.</p> <p>Mr. Mince pointed out that the current rules do not include the Intermediate Court of Appeals' ruling which gives the Commission the power to discipline the chief of police. He shared that in his two years as a police commissioner, he has seen the Commission struggle on what it can and cannot do and the kind of powers it has, and as a suggestion, he asked the County Attorney if the Commission could clarify those things in its rules so the current commissioners and future commissioners can look at the rules and know exactly what to do. He added that, to Mr. Trask's point, anything the Commission wants to do, from asking the Chief questions to driving by the police station on the way to the airport, was considered interfering with the administrative functions of the Department. So in an effort to move forward rather than try to rehash his proposed rule amendments, perhaps it would be more fruitful to have a one-on-one discussion with Mr. Trask.</p>	

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	<p>He referenced a question in Civil Beat that asked people running for office what they would do to strengthen police accountability, and the following are some of the responses:</p> <ol style="list-style-type: none"> 1. Mayoral candidate – the County Charter provides the Police Commission with oversight power over police accountability, and a large paramilitary organization asserting police power requires strong accountability mechanisms. Primary is a strong and independent police commission that interacts with the chief to ensure that leadership at the top is accountable and supported, and the key to all this is the mayor, who appoints the Police Commission. The second accountability mechanism is the citizen complaint process administered by the Police Commission. Fair and credible handling of complaints will give citizens assurance that there is good oversight. The third accountability mechanism includes oversight by the mayor and the council of administrative activities and control of the purse strings. 2. Incumbent – we need to encourage our commissions to take a more active role in conflict management and resolution so that when incidents arise, they can be fully addressed. 3. Candidate running for County Council – I support providing the Police Commission with increased oversight authority. <p>Mr. Mince shared that at one of their many meetings, he asked, relative to the County departments that do not have commission-appointed department heads, who provides oversight of that department head, and Mr. Trask responded the Mayor. He then asked when it comes to the Police Commission, who has the authority to appoint the department head, who does the oversight to ensure the compliance of the County’s policy is being met, and Mr. Trask responded nobody.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>He added that if the Commission is not here to provide oversight and the only things that the Commissioners can do are provided in the Charter, then the Commission might as well meet once a month just to acknowledge the Officer of the Month and every 10 years to appoint a new police chief because basically that’s all the Commissioners are doing.</p> <p>Chair Bahouth added that the impression he was under based on what Mr. Trask said is it really funnels down to the rules being one aspect and the Charter being another aspect, and the Commission should be looking at changing the Charter. Mr. Mince came back and said what it really comes down to is does the Commission believe it has oversight responsibility, and if it does, the Commission needs to implement rules to tell the Commissioners what it can and cannot do. He pointed out, to Mr. Trask’s point, anything that’s not in the Charter is considered administrative, but all he’s trying to do is inquire on those things; however, Mr. Trask does not see it as inquiring and sees it as interfering.</p> <p>Chair Bahouth stated for all intents and purposes, the Commission needs to sit down with Mr. Trask and have him clarify whether it’s the Commission’s rules or the Charter that needs to be changed because one affects the other.</p> <p>Vice Chair Hertog stated that lawyers are there to give advice, and the Commission can make a request and if it doesn’t get a response, then the Commissioners will take it into account when it comes time to evaluate the chief of police. She added that she disagreed with Mr. Mince as to not having a viable position because the Commission does have the authority to hire, discipline and fire the chief of police, and she disagreed with Mr. Trask that nobody has oversight to ensure the compliance of the County’s policy is being met; that’s simply not true because the Police Commission has the authority to hire, discipline and fire the chief of police and that oversight is the key to all police departments throughout the nation.</p>	

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	<p>Chair Bahouth stated, to Mr. Trask’s point about the Commission inquiring, he thinks Mr. Trask is trying to protect the Commission from the standpoint of not going too far because of liabilities; however, he agrees with Vice Chair Hertog that the Police Commission does have oversight to a certain extent, and if it wants to extend its responsibilities, it needs to be sure that it does not put itself in a position where the Commission is looked at working for the County or the Chief of Police is working for the Commission.</p> <p>Mr. Morita stated that he views the administration as picking and choosing its fights, where the Commission shouldn’t be involved and yet it is involved, so until there is consistency as to what the Commission can and cannot do, he feels otherwise.</p>	
KPC 2018-013	<p><u>Public announcement for notarized complaints no. KPC 2018-007.</u></p> <p>After a diligent inquiry by the Commission in which the Commissioners reviewed all available materials, including footage obtained by the body-worn camera, the Kaua‘i Police Commission has exonerated the officer from all wrongdoings. All parties have been properly notified of the Commission’s final disposition. This officially concluded the Commission’s review of notarized complaint no. KPC 2018-007.</p>	<p>Ms. Adams moved to receive the public announcement for notarized complaint no. KPC 2018-007. Mr. Morita seconded the motion. The motion carried 6:0.</p>
Announcements	<p>Next regular meeting – Friday, August 24, 2018, at 9:00 a.m. at the Mo’ikeha Building, Meeting Room 2A/2B. Executive Session to follow.</p>	
Executive Session	<p>Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer or employee of the County, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission’s and the County’s powers, duties, privileges, immunities, and/or liabilities as they may relate to the following agenda items:</p>	<p>At 10:04 a.m., Vice Chair Hertog read the Hawai‘i Revised Statutes to bring the meeting into Executive Session.</p>

SUBJECT	DISCUSSION	ACTION
ES KPC 2018-001	<p>Monthly update by Office of Professional Standards Lieutenant James Miller on the status of the Department’s disposition on all formal notarized complaints that were filed with the Kaua‘i Police Department, including the complaints that were filed with the Police Commission and referred to the Office of the Chief for further review.</p> <p>(b) Communication dated June 26, 2018, from Chief of Police Darryl Perry to Chair Gerald Bahouth and Members of the Police Commission regarding the Department’s final disposition for Police Commission notarized complaint nos. KPC 2018-001 and KPC 2018-002.</p>	
ES KPC 2018-002	Monthly update by Deputy Chief Contrades, or his designated representative, on any significant adverse incidents/events involving personnel in the Kaua‘i Police Department that could potentially impact the County, the Police Commission and the Kaua‘i Police Department.	
ES KPC 2018-025	Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Commission to discuss the different hiring options to find a new police chief and other related items, and to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities as they may relate to this agenda item.	
ES KPC 2018-026	Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Commission to discuss the appointment of an acting police chief, and other related items, and to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities as they may relate to this agenda item.	
ES KPC 2018-027	Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer or employee of the County, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission’s and the County’s powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	

SUBJECT	DISCUSSION	ACTION
	(a) Communication dated June 15, 2018, from Attorneys at Law Bronster Fujichaku Robbins to the Kaua‘i Police Commission regarding a request to allow a ranking member in the Kaua‘i Police Department to return back to work.	
ES KPC 2018-028	Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session meeting minutes of June 22, 2018, and the Special Executive Session meeting minutes of July 6, 2018, to consult with its attorney on issues pertaining to the Commission’s powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	Ms. Adams moved to enter into Executive Session. Vice Chair Hertog seconded the motion. The motion carried 6:0. At 10:07 a.m., the Commissioners entered into Executive Session.
Return to Open Session to Ratify the actions taken in Executive Session	At 12:20 p.m., the Commissioners reconvened in Open Session. Chair Bahouth called for a motion to ratify the actions taken in Executive Session.	<p>Ms. Adams moved to ratify the actions taken for the following Executive Session items. Vice Chair Hertog seconded the motion. The motion carried 6:0.</p> <p>ES KPC 2018-001: Motion carried 6:0 to accept the communication dated June 26, 2018.</p> <p>ES KPC 2018-002: No Report.</p> <p>ES KPC 2018-025: <u>Motion No.1</u> Motion carried 6:0 to establish a Permitted Interaction Group consisting of Commissioners Hertog, Mince and Adams to start the selection process.</p>

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		<p><u>Motion No. 2.</u> Motion carried 6:0 to target the selection process to be completed by November 16, 2018.</p> <p><u>Motion No. 3</u> Motion carried 6:0 to designate Mr. Mince as the Chair for the PIG.</p> <p><u>Motion No. 4</u> Motion carried 6:0 to designate Commissioners Mince, Hertog and Adams as members of the PIG.</p> <p>ES KPC 2018-026: Motion carried 5:1 to appoint Assistant Chief Michael Contrades as the Acting Chief effective July 27, 2018.</p> <p>ES KPC 2018:027: Motion carried 6:0 to receive the communication dated June 15, 2018, from Attorneys at Law Bronster Fujichaku Robbins.</p> <p>ES KPC 2018-028:</p>

SUBJECT	DISCUSSION	ACTION
		Motion carried 6:0 to approve the Executive Session meeting minutes of June 22, 2018, and the Special Executive Session meeting minutes of July 6, 2018.
Adjournment	Prior to the Chair calling for the vote to adjourn the meeting, Mr. Mince shared that relative to any future discussions with County Attorney Mauna Kea Trask on the proposed rule amendments, perhaps the process would go much smoother if the other members take over the task, then they can let him know what the changes are, and he can add to the draft document to which the Commissioners agreed. With no further business to conduct, Chair Bahouth called for the vote.	Ms. Adams moved to adjourn the meeting. Vice Chair Hertog seconded the motion. The motion carried 6:0. At 12:20 p.m., the meeting adjourned.

Submitted by: _____
Mercedes Omo, Commission Support Clerk

Reviewed and Approved by: _____
Gerald Bahouth, Chair

(x) Approved as circulated on September 14, 2018

() Approved as amended. See minutes of _____ meeting.